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| Item No. 6. | Classification: Open | Date: 4 August 2017 | Meeting Name: Licensing Sub-Committee |
| Report Title | | Licensing Act 2003: Elephantastic Pizza, Unit 5, The Artworks, Elephant Road, London SE17 1AY | |
| Ward(s) of group(s) affected | | East Walworth | |
| From | | Strategic Director of Environment and Social Regeneration | |

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Kyle Shearer to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as Elephantastic Pizza, Unit 5, The Artworks, Elephant Road, London SE17 1AY.
2. Notes:
 - a) This application seeks to vary the premises licence held under current legislation in respect of the premises known as: Elephantastic Pizza, Unit 5, The Artworks, Elephant Road, London SE17 1AY under section 34 of the Licensing Act 2003. Existing permitted licensable activities are not under consideration at this meeting. The variation application is subject to outstanding representations submitted by local residents and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 10 to 14 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix B.
 - c) Paragraphs 15 to 16 of this report deal with the representation submitted in respect of the application. A copy of the representation submitted by the council's licensing department is attached to this report in Appendix C. A map showing the location of the premises is attached to this report as Appendix E.
 - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.

4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to
 - The Act itself
 - The guidance to the act issued under Section 182 of the Act
 - Secondary regulations issued under the Act
 - The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations.
7. The premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

The current premises licence

8. The current premises licence issued in respect of the premises known as Elephantastic Pizza, Unit 5, The Artworks, Elephant Road, London SE17 1AY was issued on 16 March 2016 and allows the following licensable activities:
 - The sale of alcohol to be consumed on the premises
Monday to Sunday from 12:00 to 23:00
 - Opening hours:
Monday to Sunday from 12:00 to 23:00.
9. A copy of the existing premises licence is attached as Appendix A.

The variation application

10. On 31 May 2017, Kyle Shearer applied for a full variation of the premises licence at Elephantastic Pizza, Unit 5, The Artworks, Elephant Road, London SE17 1AY. The application was to increase the area for the provision of alcohol (to both on and off sales) with a change of layout, to include the whole of the courtyard area within the Artworks, immediately outside the premises.
11. Mr Shearer was advised that as the courtyard area is used by a number of other licensed premises in the immediate vicinity, this could potentially make his premises

liable for the actions both the other businesses and their customers. From the licensing authority's enforcement perspective, it may be difficult to ascertain from which premises customers had purchased alcohol for consumption in that area. Mr Shearer subsequently withdrew that application.

12. Mr Shearer submitted a replacement application on 14 June 2017. This current application seeks to add off sales to the existing premises licence to account for deliveries and the use of the courtyard area, and to add an additional hour to the morning of alcohol sales.
13. The application and is summarised as follows:
 - The supply by retail of alcohol (both on and off sales)
Monday to Sunday from 11:00 to 23:00
 - Opening hours
Monday to Sunday from 11:00 to 23:00
 - The designated premises supervisor of the premises continues to be Kyle Shearer (also the Applicant) who holds a personal licence from the London Borough of Southwark.
14. A copy of the application is attached to this report in Appendix B.

Representations from responsible authorities

15. A representation has been received from this council's licensing authority in relation to the licensing objectives for the prevention of crime and disorder and the prevention of public nuisance. The author states that there are no further measures added to the operating schedule to address how the premises will discourage patrons from drinking alcohol sold for 'off sales' in the street. Additional conditions have therefore been requested to be added to the operating schedule, namely:
 - Any 'off sales' of alcohol shall be provided in sealed containers and taken away from the premises.
 - That clear legible signage shall be prominently displayed at the premises, where it can be easily seen and read, requesting.
16. A copy of the representation is available in Appendix C.

Representations from other persons

17. No other representations have been received.

Conciliation

18. The applicant was sent a copy of the representation. The applicant has responded stating that the reason for making the application was specifically to use the courtyard, that these conditions would prevent that; further that he had followed the advice of the licensing authority. A copy of that response is available in Appendix D.

Premises history

19. There is currently a premises licence in place. A copy of the current licence is available for information in Appendix A.
20. There is no history of complaints associated with the premises received by the licensing authority. An inspection was carried out on 17 February 2017. A number of breaches of the current licence were found, namely:
 1. The Premises Licence Summary (or certified copy) was not on display and/or the Premises Licence (or certified copy) was not kept at the premises. This is in breach of Sections 57(2) & (3) of the Licensing Act 2003.
 2. The CCTV installed at the premises was not working and as such the CCTV footage which should be kept for a period of 31 days was not available. Contrary to conditions 288 and 289 on the premises licence.
 3. Staff training records regarding responsibilities under the licensing act 2003 were not available for inspection, contrary to condition 340 on the premises licence.
 4. Notices requesting customers 'to respect the needs of local residents and leave the area quietly' were not displayed at the premises, contrary to condition 311 on the premises licence
 5. There was no signage regarding 'Challenge 25' on display at points of sale or where alcohol is displayed for sale, as such and after speaking to staff, there was no evidence that a 'Challenge 25' policy has been established at the premises, contrary to condition 4AC and 4AG on the premises licence.
21. A warning letter was provided for the offences found. A revisit inspection was carried out on 5 May 2017. All issues were found to be resolved and the inspection was found to be fully satisfactory. The licence holder was again written to in order to confirm that all was satisfactory at the revisit.

Deregulation of entertainment

22. On 6 April 2015 entertainment became deregulated and as a result:
 - Live unamplified music is deregulated between 08:00 and 23:00 on any premises.
 - Live amplified music is deregulated between 08:00 and 23:00 at on-licensed premises provided the audience does not exceed 500 people. However, live music can become licensable in on-licensed premises if the licensing authority removes the effect of the deregulation following a licence review ('licence review mechanism').

Map

23. A map showing the location of the premises is attached to this report as Appendix E. There is a high concentration of licensed premises in the immediate vicinity:

Longwave Bar and Café, 1 The Artworks, Elephant Road, London SE17 1AY

- The sale by retail of alcohol (both on and off sales)
 - Monday to Sunday from 11:00 to 00:30 (the following day)
- The provision of late night refreshment (both indoors and outdoors)
 - Monday to Sunday from 23:00 to 01:00 (the following day)

Six Yard Box, Unit 6, The Artworks, Elephant Road, London SE17 1LB

- The sale by retail of alcohol (on sales only)
 - Monday to Sunday from 12:00 (midday) to 23:00

The Trunk, Unit 2, The Artworks, Elephant Road, London SE17 1AY

- The sale by retail of alcohol (both on and off sales)
 - Sunday to Thursday from 11:00 to 23:30
 - Friday and Saturday from 11:00 to 00:30 (the following day)
- The provision of late night refreshment (both indoors and outdoors)
 - Monday to Thursday from 23:00 to 23:30
 - Friday and Saturday from 23:00 to 00:30 (the following day)
- The provision of regulated entertainment in the form of films (indoors)
 - Sunday to Thursday from 08:30 to 23:30
 - Friday and Saturday from 08:30 to 00:00 (midnight)
- The provision of regulated entertainment in the form of live music, recorded music, plays and the performance of dance (all indoors)
 - Sunday to Thursday from 23:00 to 23:30
 - Friday and Saturday from 23:00 to 00:00 (midnight)

Black Acorn Tapas, Unit 16 The Artworks, Elephant Road, London SE17 1AY

- The sale by retail of alcohol (on sales)
 - Monday to Sunday from 10:00 to 23:00

Marcel and Sons,18, The Artworks, Elephant Road, London SE17 1LB

- The sale by retail of alcohol (on sales)
 - Tuesday to Saturday from 12:00 (midday) to 22:00
 - Sunday from 12:00 (midday) to 17:00

Lost Rivers, Elephant Road, London SE17 1AY

- The sale by retail of alcohol (both on and off sales)
 - Sunday to Thursday from 11:00 to 23:30
 - Friday and Saturday from 11:00 to 00:30 (the following day)
- The provision of late night refreshment (both indoors and outdoors)
 - Monday to Thursday from 23:00 to 23:30
 - Friday and Saturday from 23:00 to 00:30 (the following day)
- The provision of regulated entertainment in the form of live music, recorded music, films, play and the performance of dance (all indoors)
 - Sunday to Thursday from 10:00 to 23:30
 - Friday and Saturday from 10:00 to 00:30 (the following day)

Distaindina, Unit 6, Farrell Court, Elephant Road, London SE17 1LB

- The sale by retail of alcohol (both on and off sales)
 - Sunday to Thursday from 08:00 to 03:00 (the following day)
 - Friday and Saturday from 08:00 to 04:00 (the following day)

Bola 8 – Railway Arches 113c and 122, Elephant Road, London SE17 1LB

- The sale by retail of alcohol (on sales)
 - Monday to Wednesday from 11:00 to 02:00 (the following day)
 - Thursday to Saturday from 11:00 to 04:30 (the following day)
 - Sunday from 11:00 to 02:30 (the following day)
- The provision of late night refreshment (indoors)
 - Sunday to Thursday from 23:00 to 02:30 (the following day)
 - Friday and Saturday from 23:00 to 05:00 (the following day)
- The provision of regulated entertainment in the form of live music (indoors)
 - Monday to Sunday from 11:00 to 00:00 (midnight)
- The provision of regulated entertainment in the form of recorded music and anything similar (indoors)
 - Sunday to Thursday from 11:00 to 02:30 (the following day)
 - Friday and Saturday from 11:00 to 05:00 (the following day).

Southwark council statement of licensing policy

24. Council assembly approved Southwark's statement of licensing policy 2011-14 on 12 October 2011. Council assembly approved Southwark's statement of licensing

policy 2016-20 on 25 November 2015. The policy came into effect on 1 January 2016.

25. Further sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:

- Section 3 - Purpose and scope of the policy. This reinforces the four licensing objectives and the fundamental principles upon which this authority relies in determining licence applications
- Section 5 – Determining applications for premises licences and club premises certificates. This explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
- Section 6 – Local cumulative impact policies. This sets out this authority's approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to which they apply. To be read in conjunction with Appendix B to the policy
- Section 7 – Hours of operation. This provides a guide to the hours of licensed operation that this authority might consider appropriate by type of premises and (planning) area classification.
- Section 8 – The prevention of crime and disorder. This provides general guidance on the promotion of the first licensing objective
- Section 9 – Public safety. This provides general guidance on the promotion of the second licensing objective
- Section 10 – The prevention of nuisance. This provides general guidance on the promotion of the third licensing objective
- Section 11 – The protection of children from harm. This provides general guidance on the promotion of the fourth licensing objective.

26. The purpose of Southwark's statement of licensing policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the sub-committee when considering the applications. However, the sub-committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.

27. Within Southwark's statement of licensing policy, the premises are identified as being outside of a cumulative impact zone but inside the Elephant and Castle major town centre. Relevant closing times recommended in the Statement of Licensing Policy is as follows:

- Restaurants and cafes:
 - Sunday to Thursday until 00:00
 - Friday and Saturday until 01:00

- Public houses:
 - Sunday to Thursday until 23:00
 - Friday and Saturday until 00:00.

Resource implications

28. A fee of £190.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value bands D/E.

Consultation

29. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and similar notices were exhibited outside of the premises for a period of 28 consecutive days.

Community impact statement

30. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

31. The sub-committee is asked to determine the application to vary the premises licence under Section 34 of the Licensing Act 2003.
32. The principles which sub-committee members must apply are set out below.

Principles for making the determination

33. Section 35 of the Licensing Act 2003 sets out the licensing authority's powers and duties in considering the determination of an application for variation.
34. The general principle is that applications for variation must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
35. Relevant representations are those which
 - Are about the likely effect of the granting of the application on the promotion of the licensing objectives
 - Are made by an other party or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

36. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to
- Add to, omit, and/or alter the conditions of the licence or,
 - Reject the whole or part of the application for variation.

Conditions

37. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.
38. The four licensing objectives are
- The prevention of crime and disorder;
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
39. Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.
40. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment and take away aspect of the licence must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operators.
41. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2003 introduced 3 new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional 2 conditions will come into force – age verification policy and smaller measures for alcoholic drinks.
42. Members are also referred to the Home Office revised guidance issued under section 182 of the Licensing Act 2003 on conditions, specifically section 10.

Reasons

43. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for to vary the premises licence, it must give reasons for its decision.

Hearing procedures

44. Subject to the licensing hearing regulations, the licensing committee may determine its own procedures. Key elements of the regulations are that:

- The hearing shall take the form of a discussion led by the authority. Cross examination shall not be permitted unless the authority considered that it is required for it to consider the representations
 - Members of the authority are free to ask any question of any party or other person appearing at the hearing
 - The committee must allow the parties an equal maximum period of time in which to exercise their rights to:
 - Address the authority
 - If given permission by the committee, question any other party.
 - In response to a point which the authority has given notice it will require clarification, give further information in support of their application.
 - The committee shall disregard any information given by a party which is not relevant to the particular application before the committee and the licensing objectives
 - The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private.
 - In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.
45. This matter relates to the determination of an application to vary a premises licence under section 34 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

The council's multiple roles and the role of the licensing sub-committee

46. Sub-committee members will note that, in relation to this application, the council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.
47. Members should note that the licensing sub-committee is meeting on this occasion solely to perform the role of licensing authority. The sub-committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, members should disregard the council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the licensing law, guidance and the council's statement of licensing policy.
48. As a quasi-judicial body the licensing sub-committee is required to consider the application on its merits. The sub-committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future

event, the occurrence of which would be relevant. The licensing sub-committee must give fair consideration to the contentions of all persons entitled to make representations to them.

49. The licensing sub-committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.
50. Members will be aware of the council's code of conduct which requires them to declare personal and prejudicial interests. The code applies to members when considering licensing applications. In addition, as a quasi-judicial body, members are required to avoid both actual bias, and the appearance of bias.
51. Under the Human Rights Act 1998, the sub committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The sub-committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the borough.
52. Other persons, responsible authorities and the applicant have the right to appeal the decision of the sub-committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

Guidance

53. Members are required to have regard to the Home Office guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

Strategic Director of Finance and Governance

54. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

BACKGROUND DOCUMENTS

| Background Papers | Held At | Contact |
|--|--|----------------------------------|
| Licensing Act 2003 Home Office revised guidance to the Act Secondary Regulations Southwark statement of licensing Policy Case file | Southwark Licensing, C/O Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH | Kirty Read Tel: 020 7525 5748 |

APPENDICES

| Name | Title |
|------------|---|
| Appendix A | Copy of existing premises licence |
| Appendix B | Application for variation |
| Appendix C | Representations submitted by Responsible Authorities – the Council's Licensing Department |
| Appendix D | Response from Applicant |
| Appendix E | Map of the local area |

AUDIT TRAIL

| | | |
|---|--|--------------------------|
| Lead Officer | Deborah Collins, Strategic Director of Environment and Social Regeneration | |
| Report Author | Andrew Heron, Principal Licensing Officer | |
| Version | Final | |
| Dated | 14 July 2017 | |
| Key Decision? | No | |
| CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER | | |
| Officer Title | Comments sought | Comments included |
| Director of Law and Democracy | Yes | Yes |
| Strategic Director of Finance and Governance | No | No |
| Cabinet Member | No | No |
| Date final report sent to Constitutional Team | 19 July 2017 | |